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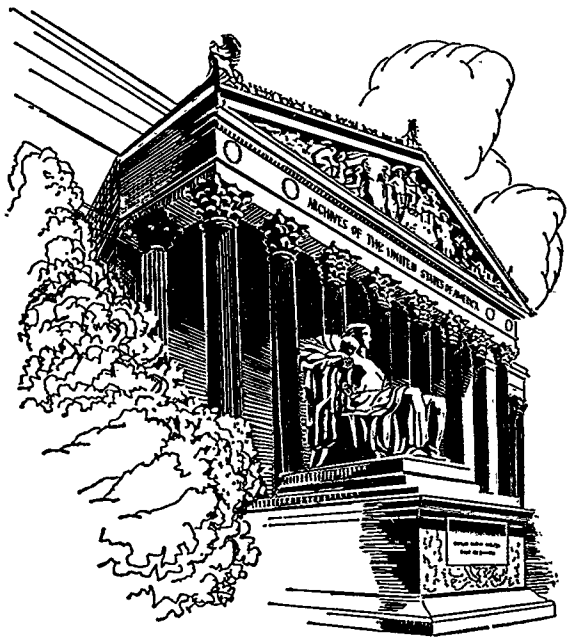

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 161]

RIGHTS-OF-WAY OVER INDIAN LAND

Notice of Proposed Rule Making

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by section 161 of the revised Statutes (5 U.S.C. 22) and the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328), it is proposed to completely revise Part 161, Title 25 of the Code of Federal Regulations below.

The most important feature of this revision is that it will for the first time provide for methods of conveyance used in the commercial world rather than the archaic method represented by the present practice of granting rights-of-way by endorsing approval on a plat or map of definite location. Aside from constituting a modernization of methods this change should also result in savings to the Government in all phases of the process of granting rights-of-way particularly in the recording aspects, and to applicants for rights-of-way. The revision also consists of the realignment of material to present a more logical sequence; the deletion of material regarded as advisory rather than regulatory in nature, and the addition of certain material which more fully encompasses the authorities of law.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed revision to the Bureau of Indian Affairs, Washington, D.C. 20242, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

MARCH 28, 1967.

Sec.

AUTHORITY: The provisions of this Part 161 issued under R.S. 161 (5 U.S.C. 22); 62 Stat. 17 (25 U.S.C. 323–328).

§ 161.1 Definitions.

As used in this Part 161:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) "Tribe" means a tribe, band, nation, community, group or pueblo of Indians. "Tribal land" means land or any interest therein, title to which is held by the United States in trust for a tribe as so defined, or title to which is held by any such tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when the grant of right-of-way will not interfere with the use of the land for the purpose for which it is reserved. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 477). This term also includes assignments of tribal land. Unless the terms of the assignment provide for the consent to the grant of rights-of-way over the land by the holder of the assignment, the tribe must join with the assignee in consenting to the grant of any such right-of-way.

§ 161.2 Purpose and scope of regulations.

(a) Except as otherwise provided in § 121.18(a) of this chapter and as provided in § 1.2 of this chapter, the regulations in this Part 161 prescribe the procedures, terms and conditions under which rights-of-way over and across tribal and individually owned Indian land may be granted.

(b) Appeals from administrative action taken under the regulations in this Part 161 shall be made in accordance with Part 2 of this chapter.

(c) The regulations contained in this Part 161 do not cover the granting of rights-of-way for the purpose of constructing, operating or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other works in connection with any project for which a license is required by the Federal Power Act. The Federal Power Act provides that any license which shall be issued to use tribal lands within a reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such lands. 16 U.S.C. 797(e). In the case of tribal lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act requires that annual charges for the use of such tribal lands under any license issued by the Federal Power Commission shall be subject to the approval of the tribe (16 U.S.C. 803(c)).

§ 161.3 Consent of landowners to grants of rights-of-way.

(a) Except as otherwise provided in this Part 161, no right-of-way shall be granted over and across tribal land nor shall any permission to survey be issued as to such lands without the prior written consent of the tribal governing body.

(b) The Secretary may without prior consent of the tribe issue permission to survey and grant rights-of-way over and across tribal land of tribes that are not organized under the provisions of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–473 and 474–479); the Act of May 1, 1936 (49 Stat. 1250; 25 U.S.C. 473a and 48 U.S.C. 358a and 362), and the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 501–509). If a tribe is not organized under the provisions of any of the above-mentioned acts but has a governing body recognized by the Secretary, the applicant for a right-of-way should seek the consent of such governing body to the grant before applying to the Secretary.

(c) Except as otherwise provided in this Part 161, no right-of-way shall be granted over and across individually owned land nor shall permission to survey be issued with respect to such land without the prior written consent of the owner or owners of such land.

(d) The Secretary may issue permission to survey and grant rights-of-way over and across individually owned land without the consent of the Indian owners when any of the following conditions exist: (1) The individual owner of the land or of an interest therein is a minor or a person non compos mentis; (2) the land is owned by more then one person and the owner or owners of a majority interest consent to the grant; (3) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined; (4) the whereabouts of the owner of the land or an interest therein is unknown and a majority of the owners (or owner) of any interests therein whose whereabouts is known consent to the grant; (5) the owners of interests in the land are so numerous that the Secretary finds that it would be impracticable to obtain their consent.

§ 161.4 Consideration for grants of rights-of-way.

Except as otherwise provided by the Secretary, the consideration for any right-of-way granted under this Part 161 shall be not less than the estimated fair market value of the rights granted, plus severance damages, if any, to the remaining estate.

§ 161.5 Other damages.

In addition to the consideration for grants of rights-of-way provided for by the provisions of § 161.4, the applicant for a right-of-way will be required to pay any damages, as estimated by the Secretary, incident to the survey of the rights-of-way or incident to the construction or maintenance of the facility for which the right-of-way is granted.

§ 161.6 Tenure of grants of rights-of-way.

All rights-of-way granted under the regulations in this Part 161 shall be in the nature of easements for the periods stated in the grant. They are terminable upon abandonment or discontinuance of the use for which granted. Rights-of-way for railroads, telephone lines, telegraph lines, public highways, and water control and use projects, including but not limited to dams, reservoirs, flowage easements, ditches, and canals, may be without limitation as to term of years. Rights-of-way for all other purposes shall be for a period of not to exceed 50 years as determined by the Secretary and stated in the grant. Rights-of-way granted for a term of years may be subject to renewal for a like term upon the payment of additional consideration for the term to be determined as provided in § 161.4. Any such renewal provisions shall be stated in the grant.

§ 161.7 Permission to survey.

The Secretary may, in accordance with the provisions of § 161.3 and upon application therefor, issue permission to survey a right-of-way upon and across tribal or individually owned lands. Prior to the issuance of such permission, the applicant may be required to make a deposit by certified check, cashier's check, or money order payable to the Bureau of Indian Affairs, or furnish a surety bond, in an amount which the Secretary deems adequate to cover double the estimated damages incident to the survey.

§ 161.8 Grants of rights-of-way.

The Secretary may, in accordance with the provisions of § 161.3 and upon application therefor, grant a right-of-way upon and across tribal or individually owned land. Prior to the grant of such right-of-way, the applicant may be required to furnish such maps or plats of definite location as are in the judgment of the Secretary necessary to describe the land covered by the right-of-way. Prior to the grant, the applicant shall also be required to pay to the Secretary for the benefit of the landowners the consideration for the grant of right-of-way. In addition to this payment, the applicant may be required to make a deposit by certified check, cashier's check, or money order payable to the Bureau of Indian Affairs, or to furnish a surety bond, in an amount as determined by the Secretary equal to the estimated damages incident to the construction of the facility. In his discretion, the Secretary may, prior to the grant of right-of-way, require that the applicant agree to any or all of the following stipulations: (a) To construct and maintain the right-of-way in a workmanlike manner; (b) to indemnify the landowners against any liability for damages to life or property arising from the occupancy or use of the lands by the applicant; (c) to restore the lands as nearly as may be possible to their original condition upon the completion of construction; and (d) that the applicant will not interfere with the use of the lands by or under authority of the landowners for any purpose consistent with the primary purpose for which the right-of-way was granted.

§ 161.9 Affidavit of completion.

Upon the completion of the construction of the facility for which a right-of-way is granted, the grantee shall file with the Secretary an affidavit of completion.

§ 161.10 Power projects.

(a) Applications for permission to survey or for the grant of right-of-way for any project for the generation of electric power, or the transmission or distribution of electric power of 33 kv or higher not excluded from the coverage of this Part 161 by the provisions of § 161.2(c) shall be referred to the Office of the Assistant Secretary for Water and Power Development or such other agency as may be designated for the area involved for approval.

(b) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision, for avoiding inductive interference between any project transmission line or other project works constructed, operated, or maintained by it on any right-of-way granted and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(c) An applicant for a right-of-way for a transmission line having a voltage of 33 kv. or more must, in addition to the stipulations provided for in § 161.8, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States. No value, however, shall be allowed at any such determination for the right-of-way granted to the applicant under authority of the regulations of this Part 161.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the total monthly cost of maintaining and operating the part of the applicant's line uti-

lized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the applicant and the Secretary of the Interior or his designee.

[F.R. Doc. 67-3633; Filed, Apr. 3, 1967; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 992]

[Docket Nos. AO 358, AO 358-RO 1]

GRAPES PRODUCED IN CALIFORNIA AND POSSIBLY ARIZONA

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Marketing Agreement and Order

Pursuant to the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.), hereinafter referred to as the "Act", notice is hereby given of the filing with the Hearing Clerk, U.S. Department of Agriculture, of this recommended decision of the Department, with respect to a proposed marketing agreement and order regulating the handling of grapes produced in California (and possibly Arizona).

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250. To be considered, exceptions must be filed not later than April 14, 1967. They should be filed in quadruplicate. All such communications will be made available for public inspection at the office of the Hearing Clerk, during regular business hours (7 CFR 1.27(b)).

Preliminary statement. A public hearing was held to consider a proposed marketing agreement and order regulating the handling of grapes produced in California (and possibly Arizona) pursuant to notice thereof which was published in the FEDERAL REGISTER of February 22, 1966 (31 F.R. 3020). The notice set forth a proposed marketing agreement and order submitted by the Grape Stabilization Committee, representing a large group of grape producers and handlers. The hearing, pursuant to the above notice, was held in Fresno, Calif., beginning March 14 through 17 and continuing March 21 through 26, 1966.

On December 2, 1966 (31 F.R. 15153), the hearing was reopened to be reconvened at a time and place to be announced by supplemental notice. As stated in the notice of reopened hearing, the principal purpose was to receive additional evidence on the question, not adequately resolved by the record evidence adduced at the initial phase of the public hearing, of how to assure adequate supplies in raisin and fresh shipment outlets while, at the same time, effecting an overall supply adjustment. Another major purpose was to receive up-to-date evidence on economic, marketing, and other conditions relating to the proposed program.

However, no specific proposals or recommendations, other than that the proceeding be terminated, have been received from the industry; and no date has been fixed for reconvening the hearing.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of Federal jurisdiction;

(2) The need for the proposed regulatory program to effectuate the declared policy of the act; and

(3) The specific terms and provisions of a proposed marketing agreement and order.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on evidence adduced at the hearing and the record thereof, are as follows:

The evidence adduced at the hearing does not permit recommendation of a sound, workable marketing agreement and order of the general nature proposed. This is particularly so because of the failure of the record evidence adequately to resolve a key regulatory issue—how to assure adequate supplies in raisin and fresh shipment outlets while, at the same time, effecting an overall supply adjustment. Therefore, it is concluded that a marketing agreement and order program cannot be recommended on the basis of this record. Hence, there is no need for further findings or conclusions on issues which relate to Federal jurisdiction, need, or the particular terms or provisions of a proposed regulatory program.

Opportunity having been given for the proposal and discussion of an adequate resolution of the matter which necessitated reopening of the hearing, and no specific proposals or recommendations in connection therewith having been received, it is also concluded that reconvening of the reopened hearing would serve no useful purpose.

Rulings on briefs of interested parties. At the conclusion of the hearing, the Presiding Officer fixed May 6, 1966, as the latest day on which interested parties could file with the Hearing Clerk, U.S. Department of Agriculture, briefs with respect to the testimony presented in evidence at the hearing, and the findings and conclusions to be drawn therefrom.

Each brief filed within the specified time was carefully considered along with the record evidence in reaching the findings and conclusions herein set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with those contained herein, the requests to make such findings or to reach such conclusions are denied.

Dated: March 30, 1967.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 67-3665; Filed, Apr. 3, 1967; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 81]

PUBLIC HEARINGS UNDER CLEAN AIR ACT

Notice of Proposed Rule Making

Notice is hereby given that the Secretary of Health, Education, and Welfare proposes to amend Chapter I of Title 42, Code of Federal Regulations by adding a new Part 81, as set out below, which will be applicable to hearings held under section 105(e) of the Clean Air Act (77 Stat. 396, 42 U.S.C. 1857d(e)).

Interested persons may submit written data, views, or arguments (in duplicate)